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Supreme Court, U.S.
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In the

Supreme Court of the United States

October Term, 1995

PATRICK BERRYMAN AND JUDITH BERRYMAN,

Petitioners,

vs.

CREDIT ADJUSTERS, INC.,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE MINNESOTA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Do payments mailed by an individual from one state to a bank located in another state qualify as "minimum contacts" sufficient to exercise in personam jurisdiction under the cases interpreting the protections of the Fourteenth Amendment to the United States Constitution?

2. Are the Minnesota courts bound to apply South Dakota authority or Minnesota authority as the standard in determining whether "minimum contacts" for in personam jurisdiction exist prior to enforcing a South Dakota judgment in Minnesota under the Full Faith and Credit Clause of the United State Constitution?

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

PATRICK BERRYMAN AND JUDITH BERRYMAN,
Petitioners

v.

CREDIT ADJUSTERS, INC., Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

The petitioners Patrick Berryman and Judith Berryman respectfully pray that a writ of certiorari issue to review the Order of the Minnesota Supreme Court entered in the above-entitled proceeding on January 9, 1995.

OPINIONS BELOW

The Order of the Minnesota Supreme Court denying the Petition of Patrick and Judith Berryman for further review is reprinted in the appendix hereto, p. A-1.

The opinion of the Court of Appeals of the Minnesota Court of Appeals is reprinted in the appendix hereto, p. A-2.

The Order of the Ramsey County District Court of the Minnesota District Court for Ramsey County is reprinted in the appendix hereto, p. A-8.

JURISDICTION

The jurisdiction of the Court to review the Order of the Minnesota Supreme Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

U.S. Const. amend. XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The legal issues presented by this case affect all interstate lending transactions including credit cards, consumer loans and mortgages. Heretofore, borrowers whose only contact with an out-of-state creditor's jurisdiction was through mailing a payment to another state had no reason to believe they might be required to litigate disputes in the lender's jurisdiction. This case has significantly altered jurisdictional law, and for that reason, review should be granted.

This Petition arises from an Order of the Minnesota Supreme Court, filed January 9, 1995, denying further review of a decision of the Minnesota Court of Appeals, filed November 8, 1994. The Court of Appeals affirmed the Order filed April 25, 1994 in Ramsey County District Court denying the motion of Petitioners Patrick Berryman and Judy Berryman ("Berrymans") for a Stay of Execution of Judgment and Vacation of a foreign judgment.

The Berrymans are native Minnesotans. In the early 1980's, the Berrymans moved to Montana and set up a business building log homes. In 1982, the Berrymans accepted the title to a trailer as payment for the construction of a log home by Mr. Berryman. The agreement was that the Berrymans would make the payments to the former owner, who would forward the payments to the bank. The payments were never forwarded to the bank, and the bank declared the note in default.

The holder of the note, the Black Hills Credit Union, a South Dakota entity doing business in Montana, called the Berrymans with an offer to sell the trailer to the Berrymans. The Berrymans purchased the trailer for the amount of the note. The paperwork was mailed to the Berrymans in Montana. The Berrymans remained in the mobile home in

Montana and mailed monthly payments to the Black Hills Credit Union in South Dakota.

Approximately two years later, the Berrymans were financially distressed and decided to return to Minnesota. The Berrymans believed that another family moved into the trailer home and had purchased it from the credit union. The Berrymans were aware and had received notice that the trailer would be repossessed, but were unaware that any repossession or sale was alleged to have occurred until they received a South Dakota Summons and Complaint on October 7, 1991 from Respondent Credit Adjusters, Inc. ("Credit Adjusters"), alleged to be an assignee of the Black Hills Credit Union.

The Berrymans received the Summons and Complaint in Minnesota while residents of Minnesota. The Berrymans neither answered the Complaint nor made any appearance in any South Dakota court. A default judgment was entered against the Berrymans in the Seventh Judicial District, Pennington County, South Dakota, on January 3, 1992, in the amount of $16,777.05. The foreign judgment was filed in Ramsey County District Court on February 28, 1994, pursuant to Minn. Stat. § 548.26-33 (1992). The Appeal to the Minnesota Court of Appeals was filed pursuant to Rule 103.03(e) of the Rules of Civil Appellate Procedure, under Minn. R. Civ. App. p. 104.01. The Minnesota District Court had applied South Dakota law, not Minnesota law, to conclude that petitioners had "minimum contacts" with South Dakota. The Minnesota Court of Appeals held that the decision in Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985) superseded Minnesota caselaw.

Since the ratification of the Fourteenth Amendment, a fundamental principle of procedural due process has been that "proceedings in the court of justice to determine the personal rights and obligations of parties over whom the court has no

jurisdiction do not constitute due process of law." Pennoyer v. Neff, 95 U.S. 714, 733 (1876). The principle was well-established, at the time of Pennoyer, that "any exercise of authority" over a person of whom the court does not have jurisdiction "is a mere nullity, and incapable of binding such persons or property in any other tribunals." Joseph Story, Commentaries on the Conflict of Laws at § 539.

The South Dakota court interpreted United States Supreme Court law to support the exercise of jurisdiction over a nonresident individual whose only contact with South Dakota was to assume a mortgage owed to a bank in South Dakota and to mail a small number of payments to the bank after assuming the mortgage. The petitioners, residents of the State of Minnesota, have had a foreign judgment entered against them by the courts of Minnesota, on the erroneous assumption that the Minnesota court must apply South Dakota law, which was interpreted by the South Dakota court to establish that petitioners had sufficient "minimum contacts" to exercise jurisdiction, even though "minimum contacts" were insufficient under Minnesota law. The property owned by the petitioners is located in Montana. The petitioners have never been to South Dakota, nor did they make an appearance by counsel to defend the South Dakota action.

The Minnesota and South Dakota courts have misinterpreted the United States Supreme Court cases addressing the issue of "minimum contacts" with the practical result that the broad interpretation of Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985) has rendered "minimum contacts" meaningless. If the lower court decision stands, this case precedent establishes that any individual who mails payments to a lender located in another state is subject to litigation in the situs of the lender. This rule completely ignores the Fourteenth Amendment's purpose as a shield

enacted to protect individual rights and turns the purpose of the Full Faith and Credit Clause of the Constitution on its head by eliminating state sovereignty, rather than merely establishing rules of comity between states. Because the result in this case can be attributed to language in United States Supreme Court "minimum contacts" cases, from International Shoe Co. v. State of Wash., 326 U.S. 310 (1945) to Burger King Corp., the United States Supreme Court should reverse the decision of the lower courts and clarify, by re-examining the relationship of the Fourteenth Amendment to the Full Faith and Credit Clause, the purpose and requirements necessary to find the "minimum contacts" necessary to establish jurisdiction over an individual. The distinction between corporations and individuals is only superficially addressed and passed over in dicta in International Shoe Co. and has not been subsequently, or sufficiently addressed. The United States Supreme Court should take the opportunity to do so in this case.

REASONS FOR GRANTING THE PETITION

I.

> The extension of Burger King Corp. to hold that all mortgagors are subject to the jurisdiction of the courts of the situs of the mortgagees exaggerates the error in Burger King Corp. and is commercially dangerous to both lenders and borrowers.

The Petitioners contend that recent decisions pertaining to "minimum contacts" improperly focus on an analysis of a states long-arm statute and rest on vague, undefined "buzzwords" such as whether a person "directs his activities"

at a state or whether "substantial fair play and justice" subject a person to jurisdiction rather than upon the definitions and principles already established in the Constitution pursuant to the Full Faith and Credit Clause and the Fourteenth Amendment. Rather than permitting the lower courts to beg the jurisdictional question, which current law does, a return to fundamental principles would restore certainty to this area of law before attorneys and their clients begin to understand the significance of Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985), as demonstrated by its logical extension in this case.

The common practice of commercial and real estate lenders to grant loans to borrowers in other states and to receive payments at their home office through the mail is well-established and expanding through the growth of the large real estate lenders and federally-insured mortgage programs. As a result, a large number of individuals are contacted by lenders from another state and offered mortgages competitive with those offered by local banks. Sometimes, as with the petitioners, the lender contacts the borrowers to negotiate an assumption of an existing loan by the new borrowers. Borrowers are unaware and do not contemplate that, in the event of default, the borrower would be subject to and required to litigate under the laws of another state and in a different state. In connection with commercial and real estate lending law and practices, the differences between states can be significant.

There is no direct precedent to support the holding that a borrower must litigate in the state of the lender because the borrower agreed to assume an existing loan and mail payments to the lender to the lender's office in another state. In the lower court, the petitioners raised Minnesota law as authority directly contradictory to the position adopted by the Minnesota Court of Appeals in this case. The Minnesota

Court of Appeals, in its decision, clearly and intentionally ignored Minnesota law because of its reliance on Burger King Corp. as the appropriate authority. Burger King Corp. erroneously failed to uphold the due process guarantees to franchisees in a franchise relationship and expanded critical points in International Shoe Co. v. State of Wash., 326 U.S. 310 (1945) and Hanson v. Denckla, 357 U.S. 235 (1958) by improperly extending crucial limitations in those previous cases. Burger King Corp. should be overruled. In the event that Burger King Corp. is not overruled or modified, the errors of Burger King Corp. should not be extended to negate established assumptions regarding the relationship between corporate lenders and individual borrowers in routine real estate lending transactions.

Subjecting the petitioners to the jurisdiction of the courts of South Dakota is not consistent with the rationale and policy considerations underlying International Shoe Co. In International Shoe Co., salesmen employed by a Delaware Corporation were personally served within the state of Washington, the jurisdiction of which was challenged by the foreign corporation defendant. International Shoe employed eleven - thirteen salesmen in Washington State under the direct supervision and control of sales managers in St. Louis, Missouri. Even though it was determined that International Shoe had no offices in Washington, the issue of whether the salesmen were employees subject to unemployment tax by Washington clearly indicates that International Shoe had a presence within Washington under principles of agency law. The salesmen worked almost exclusively obtaining sales and orders in Washington. Id. at 313-314.

The Supreme Court justified creating the "minimum contacts" doctrine as an exception to the Pennoyer requirement of physical presence by recognizing and applying

that businesses, operating through the legal fiction of the corporate form, work through agents. The Supreme Court reasoned that "it is clear that unlike an individual its 'presence' without, as well as within, the state of its origin can be manifested only by activities carried on its behalf by those who are authorized to act for it. . . . for the terms 'present' or 'presence' are used merely to symbolize those activities of the corporation's agents within the state which courts will deem to be sufficient to satisfy the demands of due process." International Shoe Co., 326 U.S. 310, 316-17.

The Supreme Court could have satisfied the "physical presence" requirement through application of agency law, and master-servant principles, and avoided the evolutionary change from Pennoyer to "minimum contacts." But in justifying the change, the Supreme Court introduced two new factors to consider. One, the courts must make "an estimate of the inconveniences which would result to the corporation from a trial away from its 'home' or principal place of business is relevant in this connection." International Shoe Co., 326 U.S. 310, 317. Two, the Court properly recognized that if a business intentionally expands its market into another state it may subject itself to that state's regulation. Id. at 319. The language used by the Court, however, "[B]ut to the extent that a corporation exercised the privilege of conducting activities with a state, it enjoys the benefits and protections of the laws of that state," Id., is not limited to preventing an out-of-state corporation from unfairly escaping the regulatory burdens placed upon their in-state competitors, but broadly envelops all individuals and consumers and intrastate activities that may have some occasional contact or transaction with another state. As a result, in order to justify jurisdiction over a corporate entity which was present in Washington, and

competing with Washington residents, the Pennoyer standard, firmly grounded in the Fourteenth Amendment, was discarded.

The Due Process requirement was further evolved in McGee v. International Life Ins. Co., 355 U.S. 220 (1957), where a Texas life insurance company was subject to jurisdiction in California, despite its never having had an office in California or solicited business there. Id. at 222. The relationship with California was based upon an assignment of a policy from an Arizona insurer that had solicited business in California. Id. Jurisdiction could have been based upon principles of agency law and principles of contract law. Rather, the court rested its decision on the Fourteenth Amendment and further restricted the "minimum contacts" defense to find that contact was sufficient if based on a single transaction. Id. at 223. In justifying the expansion of a state's jurisdiction over residents of another state, the Court admitted and described the evolution, or declination, of the Fourteenth Amendment as a shield against the deprivation of individual liberty and property by citizens of another state:

> Since Pennoyer v. Neff, 95 U.S. 714, 24 L.Ed. 565, this Court has held that the Due Process Clause of the Fourteenth Amendment places some limit on the power of state courts to enter binding judgments against persons not served with process within their boundaries. But just where this line of limitation falls has been the subject of prolific controversy, particularly with respect to foreign corporations. In a continuing process of evolution this Court accepted and then abandoned "consent," "doing business," and presence" as the standard for measuring the extent of state judicial power over such corporation. . . . More recently in International Shoe Co. v. State of Wash.,

> 326 U.S. 310, 60 S. Ct. 154, 90 L.Ed. 95 (1945), the Court decided that 'due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend' traditional notions of fair play and substantial justice.'" Id., 326 U.S. at p. 316, 66 S. Ct. at 158.
>
> Looking back over this long history of litigation a trend is clearly discernible toward expanding the permissible scope of state jurisdiction over foreign corporation and other nonresidents.

Id. at 222.

Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985) made "minimum contacts" the reciprocal of the extent of commerce clause jurisdiction, and all distinctions between individuals and corporations, or any basis in agency law for jurisdiction, were abandoned. In Burger King Corp., a Florida franchisor sued its Michigan franchisee for a breach of the franchise agreement and trademark infringement in the franchisor's home state of Florida. Id. at 468-69. In contrast with the Berrymans, who have never been to South Dakota, the Michigan franchisee had been in Florida for training. Id. at 466. But the Court ignored the commercial reality that franchisors solicit business by advertising calculated to reach potential franchisees in another state, as part of an intentional strategy to expand their market into another state, similar to International Shoe Co. "Minimum contacts" became coextensive with the commerce clause when the Court announced that "the Due Process Clause may not readily be

wielded as a territorial shield to avoid interstate obligations that have been voluntarily assumed." Id. at 474.

Although these doctrines developed to permit consumers to obtain jurisdiction over a larger foreign entity which came to them, Burger King Corp. permitted reverse application to a limited extent, which should not be expanded. The current extension of "minimum contacts" is unnecessary and not grounded in the due process principles of the Fourteenth Amendment. If the Supreme Court intended to limit Burger King Corp. to commercial transactions, the limitation was not recognized or apparent to the Minnesota Court of Appeals. Although the evolution of "minimum contacts," until Burger King Corp., involved the imposition of burdens on foreign corporations entering interstate commerce, that rationale has now been reversed. The imposition of litigating in another state has now been placed on consumers, such as the Berrymans, who could not have suspected that the execution of a promissory note in Montana, solicited by the lender, was an entitlement to the benefits and privileges of the laws of South Dakota. If the Due Process Clause cannot be wielded as a territorial shield, the true recipients of the benefits and privileges of interstate commerce, the foreign companies who may expand their markets into other states, will also be harmed. Consumers and individuals who suspect that they may be "haled into the court" of the foreign corporation's situs will be less likely or even unwilling to deal with any out-of-state business.

II.

The Fourteenth Amendment, when interpreted in combination with the Full Faith and Credit Clause, requires that the states interpret their own laws as a

basis for whether a foreign court may exercise jurisdiction over a nonresident individual.

The Petitioners appealed to the Minnesota Court of Appeals from the Minnesota District Court decision that the petitioners were subject to the jurisdiction of the South Dakota courts because of the interpretation of "minimum contacts" set forth by cases decided by the South Dakota Supreme Court. Petitioners objected to the application of South Dakota caselaw and argued that the Minnesota courts were bound to apply Minnesota law as authority to support the Petitioners' argument that personal jurisdiction was ineffective. The leading Minnesota case, Wright v. Mohs, 364 N.W.2d 848 (Minn. Ct. App. 1985), was less expansive in its test for "minimum contacts" than the applicable South Dakota authority, Opp v. Nieuwsma, 458 N.W.2d 352 (S.D. 1990). Citing Burger King Corp v. Rudzewicz, 471 U.S. 462 (1985) as authority superseding all caselaw from either state, the Minnesota Court of Appeals did not specifically address Petitioners' argument. In the event that Burger King Corp. is either overruled or held not to apply to Petitioners, the issue remains whether the Minnesota courts are still bound to accept South Dakota caselaw as mandatory authority, in Minnesota, under the Full Faith and Credit Clause.

The Petitioners possess all of the privileges and immunities of citizens of the state of Minnesota. The Petitioners' right to due process of law cannot be denied by the improper exercise of jurisdiction by the South Dakota court or by the failure of the Minnesota courts, as holders of the judicial power under the Minnesota Constitution, to refuse to enter judgment in Minnesota because of the improper exercise of jurisdiction by South Dakota. A South Dakota judgment should not be entered in Minnesota under the Full Faith and

Credit Clause because of the violation of the Petitioners' right to due process of law. The liberty and property interests of individuals cannot be denied by the surrender of sovereignty by courts who have proper authority to other courts who do not.

The Privileges and Immunities Clause, along with the Full Faith and Credit Clause and the Fugitive From Justice Clause, were all products of Article IV, Clause 1 of the Articles of Confederation, which attempted to secure "free ingress and regress to and from any other state." Arts. of Confed. art. IV, cl.1. Implicit in these provisions is the desire to "secure and perpetuate mutual friendship and intercourse among the people of the different states," Arts. of Confed. art. IV, by limiting barriers that may otherwise exist were the sovereign states free to act as sovereign nations if they chose to restrict or limit interstate commerce or travel. These clauses were not meant to force individuals who do not seek to travel to another state to litigate there because of that state's own expansive view of its jurisdiction. Minnesota cases were consistent, until this case, in requiring a physical presence, either by the individual or through a corporation's agents, to establish "minimum contacts" for the purpose of obtaining personal jurisdiction over an individual. The South Dakota courts, as set forth in Opp, 458 N.W.2d 352, require only that activities be directed at the state of South Dakota, articulated by a vague, forseeability requirement reflected in terminology such as "activities directed at the forum state" or "avail[ing] [them]selves of the privilege of acting" in the forum state. Id. at 355. This standard, as is Burger King Corp., is inconsistent with the Minnesota cases and the written text of the Constitution and the Fourteenth Amendment.

The Full Faith and Credit Clause must be harmonized with the Fourteenth Amendment. No act, order or rule of a foreign

state can be enforced against a citizen of a state when the standards of due process established by that state have been violated. The basic premises of state sovereignty have not been eliminated, only modified, by the Fourteenth Amendment. It is ironic that the Fourteenth Amendment, enacted to prevent the violation of individual rights by a state, has been interpreted to supersede the rights of an individual within a state from the exercise of authority by another state. "Minimum contacts" cannot be interpreted so broadly as to intrude upon the sovereign rights of another state and the rights of the citizens of that state.

The Petitioners are not advocating a return to the rigidity with which Pennoyer v. Neff was believed to restrict service of process. Milliken v. Meyer, 311 U.S. 457 (1940) properly recognized that long-arm statutes could be used to obtain service upon individuals who once enjoyed the benefits and privileges of being in a state but could not presently be found in that state. Id. at 464-65. But the alleged realities of modern interstate commerce, cited to support the evolvement of the "minimum contacts" rule from International Shoe Co. to Burger King Corp., are not, in fact, in existence when a consumer who has little money or time is required to drive across country to enter the home situs of his mortgage lender for the first time to litigate, merely because that is more convenient for the lender. If the domiciliary state is required to surrender its sovereignty to the whim of the lawmakers of any other foreign state or nation, because of the supposed realities of modern interstate commerce, then the realities of modern interstate, and foreign commerce, will be short-lived because consumers will not be able to safely transact business solicited from them in their home states at the risk of surrendering their privileges or immunities guaranteed by the laws of their home state.

CONCLUSION

Petitioners respectfully request that the United States Supreme Court grant the Petition to review and reverse the decision of the Minnesota Court of Appeals on the grounds that the Minnesota Court of Appeals has misapplied the Full Faith and Credit Clause and Fourteenth Amendment of the United States Constitution. The Petitioners further request that this Court reconsider its decision in Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985) and/or prevent the extension of its holding to consumers making payments to lenders of another state.

Respectfully submitted,

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APPENDIX

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Order of the Minnesota Supreme Court A-1

Unpublished Opinion of the Minnesota Court of Appeals... A-2

Order of Ramsey County District Court A-10

STATE OF MINNESOTA

IN SUPREME COURT

C2-94-1080

Credit Adjusters,

Respondent,

vs.

Patrick Berryman, et al.,

Appellants.

ORDER

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petition of Patrick and Judith Berryman for further review be, and the same is, denied.

Dated:

BY THE COURT:

s/s

Chief Justice

This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (1992).

STATE OF MINNESOTA

IN COURT OF APPEALS

C2-94-1080

Ramsey County
District Court File No. C8-94-1984

Jones, Judge*

Credit Adjusters,

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Filed November 8, 1994
Office of Appellate Courts

Considered and decided by Parker, Presiding Judge, Kalitowski, Judge, and Jones, Judge.

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*Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

JONES, Judge

The Berrymans appeal the district court's denial of their motions to vacate or to stay the execution of a South Dakota default judgment, arguing that the judgment is void because the South Dakota court lacked personal jurisdiction. We conclude there were sufficient minimum contacts with the forum state under the applicable federal law. We affirm.

FACTS

In the early 1980s, the Berrymans lived in Montana and operated a log home building company. In 1982, the Berrymans agreed to build a log home for an acquaintance in exchange for his Montana mobile home; the Berrymans were to make the mobile home payments to the acquaintance and he was to forward the money to the Black Hills Credit Union (the credit union), the holder of the note on the home. The credit union is located in South Dakota.

Because the acquaintance failed to forward the payments, the credit union declared the note in default. The credit union then contacted the Berrymans and offered to sell them the trailer. After negotiating over the price, the Berrymans agreed to purchase the mobile home for the remainder of the note, and signed loan application forms binding them to a 90-month loan payable to the South Dakota credit union.

The Berrymans made payments for approximately two years, but fell behind. After receiving a notice of default from the credit union, they signed a voluntary surrender of collateral form conditioned on their freedom from all other financial obligations. The credit union responded that the form was not

acceptable and that the Berrymans were responsible for any deficiencies. The Berrymans then moved back to Minnesota from Montana without reaching further agreement with the credit union.

Credit Adjusters served the Berrymans with a summons and complaint notifying them of the South Dakota action. The Berrymans did not answer the complaint nor appear in court; the South Dakota district court entered a default judgment in favor of Credit Adjusters for $16,777.05. Two years later, Credit Adjusters sought to enforce the South Dakota default judgment in Minnesota by filing the judgment in Ramsey County. The Berrymans moved to stay enforcement of the judgment and to vacate the judgment, but the Ramsey County district court denied the motions.

On appeal, the Berrymans challenge the district court's denial of their motions to vacate or stay execution of the judgment, arguing that the judgment is void because the South Dakota court had no personal jurisdiction.

DECISION

This court reviews the trial court's decision to deny a motion to vacate or stay the enforcement of a foreign judgment based on personal jurisdiction de novo. Gibson v. Baxter, 434 N.W.2d 486, 487 (Minn. App. 1989).

Minnesota statutes provide that a judgment obtained in another court of the United States may be enforced by a district court of this state. Minn. Stat. §§ 548.26, 548.27 (1992).[1] After a certified copy of the foreign judgment is filed in the Minnesota district court, the judgment is treated "in the same manner as a judgment of any district court or the

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[1]Minn. Stat. §§ 548.26-.33 are known as the Uniform Enforcement of Foreign Judgments Act.

supreme court of this state." Minn. Stat. § 548.27. The judgment then "has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of a district court or the supreme court of this state." Id.

Under Minnesota Rules of Civil Procedure, a court may relieve a party from a final judgment or grant other relief as is just if the judgment is void. Minn. R. Civ. P. 60.02(d). A void judgment is one rendered in absence of jurisdiction over the subject matter or parties. Matson v. Matson, 310 N.W.2d 502, 506 (Minn. App. 1981) (citing Lange v. Johnson, 295 Minn. 320, 323, 204 N.W.2d 205, 208 (1953)).

Personal jurisdiction, pursuant to the Minnesota long-arm statute, extends as far as the Due Process Clause of the United States Constitution allows, and Minn. Stat. § 543.19, subd. 3 (1992) does not place more restrictive limits on the exercise of personal jurisdiction over nonresident defendants by Minnesota courts than those of the United States Constitution. Valspar Corp. v. Lukken Color Corp., 495 N.W.2d 408, 410-11 (Minn. 1992). "In determining whether the foreign court obtained personal jurisdiction, Minnesota courts apply the law [the long-arm jurisdiction statute] of the foreign state as construed by the courts of that state." Electro-Measure, Inc. v. Ewald Enter., Inc., 398 N.W.2d 85, 88 (Minn. App. 1986), pet. for rev. denied (Minn. Mar. 13, 1987).

The South Dakota jurisdiction statute provides that

> [a] ny person is subject to the jurisdiction of the courts of this state as to any action arising from the doing personally, through any employee, through an agent or through a subsidiary, of any of the following acts:

(1) The transaction of any business within the state.

S.D. Codified Laws Ann. § 15-7-2 (Supp. 1986).

The South Dakota Supreme Court has held that any contacts by nonresidents with South Dakota sufficient to satisfy the due process requirements are sufficient to authorize the exercise of personal jurisdiction under the South Dakota long-arm statute. See Opp v. Nieuwsma, 458 N.W.2d 352, 355-56 (S.D. 1990); Ventling v. Kraft, 161 N.W.2d 29, 34 (S.D. 1968). Therefore, the primary consideration in this case is the sufficiency of the due process minimum contacts between the Berrymans and South Dakota.

The defendant first must purposefully avail itself of the privilege of acting in the forum state and invoke the benefits and protections of its laws to establish minimum contacts. Hanson v. Denckla, 357 U.S. 235, 253, 78 S. Ct. 1228, 1240 (1958). Next, the cause of the action must arise from the defendant's activities directed at the forum state. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297, 100 S. Ct. 559, 567 (1980). Finally, the acts of defendant must have substantial connection with the forum state to make the exercise of jurisdiction over defendant a reasonable one. Id. An important factor bearing upon the reasonableness of asserting jurisdiction is to determine if defendant's conduct and connection with the forum state are such that he could "reasonably anticipate being haled into court there." Id.

In Burger King v. Rudzewiez, 471 U.S. 462, 472, 105 S. Ct. 2174, 2182 (1985) the Court addressed "interstate contractual obligations" and stated that

> we have emphasized that parties who "reach out beyond one state and create continuing relationships and obligations with citizens of another state" are subject to regulation and sanctions in the other State for the consequences of their activities.

Id. The Burger King Court also noted that where the defendant has created continuing obligations between himself and the forum state, it is "presumptively not unreasonable to require him to submit to the burdens of litigation in that forum." Id. at 476, 105 S. Ct. at 2184.

An absence of physical contacts does not necessarily defeat personal jurisdiction if a commercial actor's efforts are purposefully directed towards another state's residents. Id. (citing Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 774-75, 104 S. Ct. 1473, 1478 (1984)). The U.S. Supreme Court also has recognized that even a single isolated transaction between a nonresident defendant and a resident plaintiff can be a sufficient contact to justify exercising personal jurisdiction under due process standards. See, e.g., McGee v. International Life Ins. Co., 355 U.S. 220, 223, 78 S. Ct. 199, 201 (1957).

Here, the Berrymans argue that a finding of personal jurisdiction violates the Due Process Clause because there are insufficient minimum contacts. We disagree. Although they were never actually in the forum state, the record shows that the Berrymans: (1) voluntarily negotiated with the South Dakota credit union before purchasing the mobile home; (2) applied to the credit union for a loan to finance the purchase; (3) corresponded with the bank about insurance coverage for the home; (4) signed a promissory note with the credit union which specified monthly payments over 90 months; (5) for approximately two years sent monthly payments to the credit

union; (6) defaulted on the note and were sent a notice of default from the credit union; and finally (7) attempted to negotiate a voluntary repossession of the mobile home.

Based on Burger King and World-Wide Volkswagen, we conclude that there are sufficient minimum contacts with South Dakota to support the exercise of personal jurisdiction. Moreover, we conclude that the Berrymans' argument regarding the Privileges and Immunities Clause of the Federal Constitution is unpersuasive.

Affirmed.

s/s

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT
CASE TYPE: JUDGMENT
FILE NO. C8-94-1984

Credit Adjusters,

Plaintiff

ORDER

vs.

Patrick and Judith Berryman,

Defendants.

The above-captioned matter came on for a hearing before the Honorable Mary Louise Klas, Judge of Ramsey County District Court on April 15, 1994 at 3:00 P.M. Plaintiff appeared telephonically through its counsel Rodney W. Schlauger, of Bangs, McCullen, Butler, Foye & Simmons. Defendants were represented by their counsel, Attorney Wayne B. Holstad of Holstad, Johnson, and Larson, PC. After a review of the file, Memorandum, and affidavits submitted, and after hearing arguments of Counsel it is hereby

ORDERED, ADJUDGED, AND DECREED that Defendants, Motion to vacate the South Dakota Judgment dated January 3, 1992 is hereby denied; and it is further

ORDERED, ADJUDGED, AND DECREED that Defendants' Motion to Stay Execution of the South Dakota Judgment dated January 3, 1992 is hereby denied.

BY THE COURT:

Dated: _____

s/s
Mary Louise Klas
Judge of Ramsey County
District Court

Supreme Court, U.S.
FILED
MAY 5 1995
OFFICE OF THE CLERK

No. 94-1663

In The

Supreme Court of the United States

October Term, 1994

PATRICK BERRYMAN AND JUDITH BERRYMAN,

Petitioners,

vs.

CREDIT ADJUSTERS,

Respondent.

Petition For Writ Of Certiorari
To The Minnesota Supreme Court

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a South Dakota District Court properly exercised personal jurisdiction over the Petitioners such that Petitioners' motion to stay execution and vacate the resulting foreign judgment filed in Minnesota was properly denied.

LIST OF PARTIES

The caption of this Brief in Opposition contains the proper names of all parties to this matter. Credico, Inc., is the parent company of Respondent Credit Adjusters.

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No. 94-1663

In The

Supreme Court of the United States

October Term, 1994

PATRICK BERRYMAN AND JUDITH BERRYMAN,

Petitioners,

vs.

CREDIT ADJUSTERS,

Respondent.

Petition For Writ Of Certiorari To The Minnesota Supreme Court

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent Credit Adjusters respectfully prays that the Petition for Writ of Certiorari to the Minnesota Supreme Court be in all things denied.

JURISDICTION

Petitioners' jurisdictional statement is defective. They seek review of the decision of the wrong state court. Pursuant to 28 U.S.C. § 1257(a), final judgments or decrees rendered by "the highest court of a state in which a decision could be had" may be reviewed by the United

States Supreme Court by writ of certiorari. In this instance, Petitioners pray for a writ of certiorari to review an Order of the Minnesota Supreme Court. This Order, however, did not reach the merits of the federal question in this case, but rather merely denied Petitioners' request to have the Minnesota Supreme Court review the judgment rendered by the Minnesota Court of Appeals in this matter. Because the Minnesota Supreme Court declined to review this case and therefore did not pass upon a federal question, the judgment of the Minnesota Court of Appeals is the judgment of the highest state court for purposes of jurisdiction under 28 U.S.C. § 1257(a). See *Michigan-Wisconsin Pipe Line Company v. Calvert*, 347 U.S. 157, 98 L.Ed. 583, 74 S.Ct. 396, *reh. den.* 347 U.S. 931, 98 L.Ed. 1083, 74 S.Ct. 528 (1954); *American Railway Express Company v. Levee*, 263 U.S. 19, 68 L.Ed. 140, 44 S.Ct. 11 (1923). See also *Cohen v. California*, 403 U.S. 15, 29 L.Ed.2d 284, 91 S.Ct. 1780, *reh. den.* 404 U.S. 876, 30 L.Ed.2d 124, 92 S.Ct. 26 (1971); *Chesapeake & O. R. Co. v. Mihas*, 280 U.S. 102, 74 L.Ed. 207, 50 S.Ct. 42 (1929); *Mellon v. O'Neil*, 275 U.S. 212, 72 L.Ed. 245, 48 S.Ct. 62 (1927); *Bacon v. Texas*, 163 U.S. 207, 41 L.Ed. 132, 16 S.Ct. 1023 (1896).

The United States Supreme Court does not have jurisdiction pursuant to 28 U.S.C. § 1257(a) to review by writ of certiorari the Order of the Minnesota Supreme Court in this matter. The Petition for Writ of Certiorari should therefore be summarily dismissed.

STATUTES INVOLVED

U.S.C. § 1257(a)(b):

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

S.D.C.L. § 15-7-2(1):

Any person is subject to the jurisdiction of the courts of this state as to any cause of action arising from the doing personally, through any employee, through an agent or through a subsidiary, of any of the following acts:

(1) The transaction of any business within the state;

* * * .

See Resp. App. A1-2 for full citation.

STATEMENT OF THE CASE

Respondent Credit Adjusters obtained a default judgment against Petitioners Patrick Berryman and Judith Berryman in the Seventh Judicial District, Pennington County, State of South Dakota, on January 3, 1992. On February 28, 1994, Credit Adjusters filed the default judgment in Ramsey County District Court, Second Judicial District, State of Minnesota. Notice of Entry of Foreign Judgment was served upon the Berrymans that same day pursuant to the Minnesota Uniform Enforcement of Foreign Judgments Act, Minn. Stat. § 548.27 and Minn. Stat. § 548.28.

Thereafter, the Berrymans moved the District Court, Judge Mary Louise Klas presiding, to stay execution of judgment and vacate the foreign judgment. The Berrymans' motions were denied upon Order of the Court dated April 25, 1994. The Berrymans appealed the trial court decision to the Minnesota Court of Appeals, which affirmed the trial court's order in an unpublished opinion dated October 27, 1994, and filed November 8, 1994.

The Berrymans subsequently petitioned the Minnesota Supreme Court for discretionary review of the decision of the Minnesota Court of Appeals. The Berrymans' petition to the Minnesota Supreme Court was denied by Order dated January 9, 1995. The Berrymans' Petition for Writ of Certiorari to the Minnesota Supreme Court follows.

Respondent Credit Adjusters perceives a number of misstatements of fact in the Petitioners' Statement of the Case and Reasons for Granting Review. It should be made clear that there are no credit cards or mortgages involved

in this matter. The Petitioners did not assume a mortgage or other existing loan, and their contacts with the state of South Dakota were far greater than merely mailing a few loan payments to the South Dakota lender.

As set forth in the Minnesota Court of Appeals' decision below, the Petitioners:

(1) Negotiated with the South Dakota credit union regarding the price of the mobile home before purchasing it;

(2) Applied to the credit union for a loan to finance the purchase;

(3) Corresponded with the bank about insurance coverage for the mobile home;

(4) Signed a promissory note with the credit union which specified monthly payments over a period of 90 months;

(5) For approximately two years, sent monthly payments to the credit union;

(6) Defaulted on the promissory note and were sent a notice of default from the credit union; and

(7) Attempted to negotiate with their South Dakota lender a voluntary repossession of the mobile home.

See Petitioners' App. A4-5, A8-9. Based upon these numerous and significant contacts, the Minnesota Court of Appeals determined that the Petitioners had sufficient "minimum contacts" with the state of South Dakota. It is disingenuous for the Petitioners to suggest, as they do in

their Questions Presented, that this case involved only "payments mailed" as the basis for jurisdiction.

SUMMARY OF ARGUMENT

Petitioners have failed to demonstrate any special or important reasons for granting the Petition for Writ of Certiorari. In holding that the South Dakota District Court properly exercised personal jurisdiction over the Petitioners, the Minnesota Court of Appeals analyzed and applied the long line of United States Supreme Court decisions defining the parameters of Constitutional due process afforded non-resident defendants. Petitioners present no reasonable basis for overruling the *Burger King* decision. Petitioners' choice of law analysis raises a state law question, which is not within the jurisdiction of the United States Supreme Court. Petitioners' jurisdictional statement is defective and this Court is without jurisdiction to review the Order of the Minnesota Supreme Court in this matter. The Petition for Writ of Certiorari to the Minnesota Supreme Court should be denied.

ARGUMENT

I. THE MINNESOTA COURT OF APPEALS' DECISION IS CONSISTENT WITH FEDERAL LAW AND IS BASED UPON THE NUMEROUS AND SIGNIFICANT CONTACTS OF THE PETITIONERS WITH THE STATE OF SOUTH DAKOTA.

Rule 10 of the Supreme Court Rules sets forth the considerations governing review on writ of certiorari. A

petition for writ of certiorari will be granted only when there are special and important reasons, and the following criteria are listed in Rule 10.1(b)(c), as indicative of the character of reasons that will be considered:

> (b) when a state court of last resort has decided a federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals.
>
> (c) when a state court * * * has decided an important question of federal law which has not been, but should be, settled by this court, or has decided a federal question in a way that conflicts with applicable decisions of this court.

The Minnesota Court of Appeals' decision in this matter was expressly based upon this Court's holding in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 62 L.Ed.2d 490, 100 S.Ct. 559 (1980) and *Burger King v. Rudzewiez*, 471 U.S. 462, 85 L.Ed.2d 528, 105 S.Ct. 2174 (1985). Petitioners have failed to make any showing that the Minnesota Court of Appeals' decision is in any way in conflict with the decisions of the United States Supreme Court, the United States Court of Appeals, nor any other state court of last resort. The Minnesota Court of Appeals' decision in this case is a straightforward application of the principles enunciated in the *Burger King* decision, and is based upon the significant quantity and quality of the Berrymans' contacts with the state of South Dakota.

Regarding "interstate contractual obligations" such as in this case, the United States Supreme Court in *Burger King* stated:

> [W]e have emphasized that parties who "reach out beyond one state and create continuing relationships and obligations with citizens of another state" are subject to regulation and sanctions in the other State for the consequences of their activities. * * * Thus where the defendant "deliberately" has engaged in significant activities within a state, or has *created 'continuing obligations' between himself and residents of the forum, he manifestly has availed himself of the privilege of conducting business there*, and, because his actions are shielded by "the benefits and protections" of the forum's laws, it is presumptively not unreasonable to require him to submit to the burden of litigation in that forum as well.

Burger King, 471 U.S. at 473, 475-76, 105 S.Ct. at 2182, 2184, 85 L.Ed.2d at 541, 543 (citations omitted) (emphasis added).

The Berrymans deliberately chose to finance the purchase of their mobile home with a South Dakota bank, upon a promissory note which contemplated payments to be made to the bank in South Dakota over a period of 90 months. By their voluntary conduct, the Berrymans purposefully created a continuing obligation between themselves and a South Dakota resident, and thereby availed themselves of the privilege of conducting business in South Dakota. Further, the Berrymans' default on this promissory note formed the basis for the lawsuit brought against them in South Dakota. Therefore, the South Dakota cause of action against the Berrymans arose directly out of their contacts with South Dakota. See *McGee v. International Life Ins. Co.*, 355 U.S. 220, 223, 2 L.Ed.2d 223, 78 S.Ct. 199, 201 (1957)) (where cause of action arises out of contacts, even one isolated transaction

may be sufficient). *See also Marquette National Bank of Minneapolis v. Norris*, 270 N.W.2d 290, 295 (Minn. 1978). It does not offend traditional notions of fair play and substantial justice to expect the Berrymans to respond to a lawsuit on the promissory note in South Dakota.

II. PETITIONERS' CHOICE OF LAW ANALYSIS RAISES A STATE LAW QUESTION WHICH IS ALREADY WELL SETTLED AND IS NOT THE PROPER SUBJECT OF THIS COURT'S JURISDICTION.

Petitioners' second argument (under Section II) appears to raise a question of Minnesota state law, which is clearly a matter not within the jurisdiction of the United States Supreme Court pursuant to 28 U.S.C. 1257(a). Further, the analysis is well settled in Minnesota that:

> In determining whether the foreign court obtained personal jurisdiction [over a non-resident defendant], Minnesota courts apply the law [the long arm jurisdiction statute] of the foreign state as construed by the courts of that state.

Electro-Measure, Inc. v. Ewald Enter., Inc., 398 N.W.2d 85, 88 (Minn. App. 1986), *pet. rev. den.* (Minn., March 13, 1987).

The Minnesota Court of Appeals applied this analysis, and in its opinion acknowledged that both the South Dakota jurisdictional statute, as well as the Minnesota jurisdictional statute, placed no more restrictive limits on the exercise of personal jurisdiction over non-resident

defendants than does the United States Constitution. *See* Petitioners' App. A6-7. Therefore, the primary consideration in this matter was the sufficiency of the due process minimum contacts between the Berrymans and the state of South Dakota. The Minnesota Court of Appeals cited and applied the long line of United States Supreme Court decisions defining the parameters of constitutional due process for the exercise of personal jurisdiction, as discussed above. Petitioners have failed to make any reasonable showing why this Court should overrule the *Burger King* decision and the long line of cases leading up to it.

CONCLUSION

Respondent respectfully requests that the United States Supreme Court deny the Petition for Writ of Certiorari to the Minnesota Supreme Court. Petitioners' jurisdictional statement is flawed and Petitioners have failed to demonstrate any special or important reason to grant the Petition for Writ of Certiorari. The Minnesota Court of Appeals' decision in this matter was a well reasoned application of established constitutional principles of due process in the context of *in personam* jurisdiction over non-resident defendants.

Respectfully submitted,

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RESPONDENT'S APPENDIX

S.D.C.L. 15-7-2. Any person is subject to the jurisdiction of the courts of this state as to any cause of action arising from the doing personally, through any employee, through an agent or through a subsidiary, of any of the following acts:

(1) The transaction of any business within the state;

(2) The commission of any act which results in accrual within this state of a tort action;

(3) The ownership, use, or possession of any property, or of any interest therein, situated within this state;

(4) Contracting to insure any person, property, or risk located within this state at the time of contracting;

(5) Entering into a contract for services to be rendered or for materials to be furnished in this state by such person;

(6) Acting as director, manager, trustee, or other officer of any corporation organized under the laws of, or having its principal place of business within this state, or as executor or administrator of any estate within this state;

(7) Failure to support a minor child residing in South Dakota;

(8) Having sexual intercourse in this state, which act creates a cause of action for the determination of paternity of a child who may have been conceived by that act of intercourse;

(9) With respect to any action for divorce, separate maintenance or spousal support the maintenance in this state of a matrimonial domicile at the time the claim arose or the commission in this state of an act giving rise to the claim, subject to the provisions of § 25-4-30;

(10) Entering into negotiations with any person within the state with the apparent objective of contracting for services to be rendered or materials to be furnished in this state;

(11) Commencing or participating in negotiations, mediation, arbitration or litigation involving subject matter located in whole or in part within the state;

(12) Doing any act for the purpose of influencing legislation, administrative rule-making or judicial or administrative decision-making by any local, state or federal official whose official function is being performed within the state, providing that an appearance to contest personal jurisdiction shall not be within this subsection;

(13) The commission of any act which results in the accrual of an action in this state for a violation of the antitrust laws of the United States or chapter 37-1.